

AMENDED IN ASSEMBLY APRIL 2, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1849

Introduced by Assembly Member Kelley

January 29, 2002

An act to amend Section 1601 of the Fish and Game Code, relating to streambed alteration, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1849, as amended, Kelley. Streambed alteration agreements: natural community conservation plans.

(1) Existing law requires state and local governmental agencies and public utilities to submit general plans to the Department of Fish and Game if the plans indicate that a project for construction by, or on behalf of, those entities will have a described effect on certain waterways or streambeds. Existing law requires the department to propose modifications to those plans if an existing fish or wildlife resource may be substantially adversely affected by the project. Existing law requires the agency or utility to notify the department whether the proposals are acceptable. The agreement reached pursuant to these provisions is known as a streambed alteration agreement.

The existing Natural Community Conservation Planning Act authorizes the department to enter into an agreement with any person for the purpose of preparing and implementing a natural community conservation plan to provide comprehensive management and conservation of multiple wildlife species.

This bill would authorize *any state or local agency and any public utility with multiple rivers, streams, or lakes within its jurisdiction to*

voluntarily enter into a master agreement, as defined, with the department. The bill would authorize the department, ~~in conjunction with an approved natural community conservation plan,~~ to enter into a streambed alteration the master agreement under the provisions described above for a term coinciding with the term of the any permit issued under the Natural Community Conservation Planning Act if the department determines that the master agreement fulfills the requirements of that plan and that the master agreement supports the conservation of species consistent with that plan.

(2) Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department to carry out the Fish and Game Code.

By authorizing the department to undertake additional activities, the bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1601 of the Fish and Game Code is
2 amended to read:
3 1601. (a) Except as provided in this section, general plans
4 sufficient to indicate the nature of a project for construction by, or
5 on behalf of, any state or local governmental agency or any public
6 utility shall be submitted to the department if the project will (1)
7 divert, obstruct, or change the natural flow or the bed, channel, or
8 bank of any river, stream, or lake designated by the department in
9 which there is at any time an existing fish or wildlife resource or
10 from which these resources derive benefit, (2) use material from
11 the streambeds designated by the department, or (3) result in the
12 disposal or deposition of debris, waste, or other material
13 containing crumbled, flaked, or ground pavement where it can
14 pass into any river, stream, or lake designated by the department.
15 If an existing fish or wildlife resource may be substantially
16 adversely affected by that construction, the department shall notify
17 the governmental agency or public utility of the existence of the
18 fish or wildlife resource together with a description thereof and
19 shall propose reasonable modifications in the proposed
20 construction that will allow for the protection and continuance of
21 the fish or wildlife resource, including procedures to review the

1 operation of those protective measures. The department's
2 description of an existing fish or wildlife resource shall be specific
3 and detailed and the department shall make available upon request
4 the information upon which its conclusion is based that the
5 resource may be substantially adversely affected. The proposals
6 shall be submitted within 30 days from the date of receipt of the
7 plans, except that the time period may be extended by mutual
8 agreement. Upon a determination by the department and after
9 notice to the affected parties of the necessity for an onsite
10 investigation or upon the request for an onsite investigation by the
11 affected parties, the department shall make an onsite investigation
12 of the proposed construction and shall make the investigation
13 before it proposes any modifications.

14 (b) (1) Within 14 days from the date of receipt of the
15 department's proposals, the affected agency or public utility shall
16 notify the department in writing whether the proposals are
17 acceptable, except that the time period may be extended by mutual
18 agreement. If the department's proposals are not acceptable to the
19 affected agency or public utility, the agency or public utility shall
20 so notify the department. Upon request, the department shall meet
21 with the affected agency or public utility within seven days of
22 receipt of the notification, or at a time mutually agreed upon, for
23 the purpose of developing proposals that are acceptable to the
24 department and the affected agency or public utility.

25 (2) If mutual agreement is not reached at the meeting held
26 pursuant to paragraph (1), a panel of arbitrators shall be
27 established. The panel of arbitrators shall be established within
28 seven days from the date of the meeting, or at a time mutually
29 agreed upon, and shall be composed of one representative of the
30 department, one representative of the affected agency or public
31 utility, and a third person mutually agreed upon or, if no agreement
32 can be reached, the third person shall be appointed in the manner
33 provided by Section 1281.6 of the Code of Civil Procedure. The
34 third person shall act as chair of the panel. The panel may settle
35 disagreements and make binding decisions regarding the fish and
36 wildlife modifications. The arbitration shall be completed within
37 14 days from the date that the composition of the panel is
38 established, unless the time is extended by mutual agreement. The
39 expenses of the department representative shall be paid by the
40 department; the expenses of the representative of the

1 governmental agency or the public utility shall be paid by the
2 governmental agency or the public utility; and the expenses of the
3 chair of the panel shall be paid one-half by each party.

4 (c) A governmental agency or public utility proposing a project
5 subject to this section shall not commence operations on that
6 project until the department has found that the project will not
7 substantially adversely affect an existing fish or wildlife resource
8 or until the department's proposals, or the decisions of a panel of
9 arbitrators, have been incorporated into the project. The
10 department shall not condition the streambed alteration agreement
11 on a project subject to this section on the receipt of another state
12 or federal permit.

13 (d) The department shall determine and specify types of work,
14 methods of performance, or remedial measures that are exempt
15 from this section.

16 (e) With regard to any project that involves the routine
17 maintenance and operation of water supply, drainage, flood
18 control, or waste treatment and disposal facilities, notice to, and
19 agreement with, the department is not required subsequent to the
20 initial notification and agreement, unless the work as described in
21 the agreement is substantially changed or conditions affecting fish
22 and wildlife resources substantially change, and the resources are
23 adversely affected by the activity conducted under the agreement.
24 This subdivision applies in any instance where notice to, and
25 agreement with, the department has been attained prior to January
26 1, 1977.

27 (f) (1) Except as provided in paragraph (2), this section does
28 not apply to any of the following projects:

29 (A) Immediate emergency work necessary to protect life or
30 property.

31 (B) Immediate emergency repairs to public service facilities
32 necessary to maintain service as a result of a disaster in a
33 disaster-stricken area in which a state of emergency has been
34 proclaimed by the Governor pursuant to Chapter 7 (commencing
35 with Section 8550) of Division 1 of Title 2 of the Government
36 Code.

37 (C) Emergency projects undertaken, carried out, or approved
38 by a public agency to maintain, repair, or restore an existing
39 highway, as defined in Section 360 of the Vehicle Code, except for
40 a highway designated as an official state scenic highway pursuant

to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This subparagraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(2) The agency or public utility performing the project shall notify the department within 14 days from the date of commencement of a project exempted by this subdivision.

(3) For purposes of this subdivision, “emergency” means an emergency, as defined in Section 21060.3 of the Public Resources Code.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of operations on projects subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

~~(h) Notwithstanding any other provision, in conjunction with~~

(h) (1) (A) Any state or local agency and any public utility with multiple rivers, streams, or lakes within its jurisdiction may voluntarily enter into a master agreement with the department for the performance of operations on projects subject to this section.

(B) For the purposes of this subdivision, a master agreement is an agreement that comprehensively addresses projects impacting

1 rivers, streams, and lakes, including, but not limited to,
2 construction and maintenance activities related to those projects.
3 A master agreement shall include, but is not limited to, all of the
4 following:

5 (i) Identification of fish and wildlife resources that may be
6 adversely affected by the project.

7 (ii) Specific goals and objectives for resource protection.

8 (iii) The general location of current and future projects.

9 (iv) Identification of the range of measures that will be used to
10 meet the specific goals and objectives identified in clause (ii).

11 (v) The process for determining site specific measures to be
12 implemented.

13 (vi) The process the department intends to follow in monitoring
14 the implementation of resource protection measures.

15 (2) In conjunction with an approved natural community
16 conservation plan, the department may enter into an agreement
17 ~~pursuant to this section~~ the master agreement described in
18 paragraph (1) for a term coinciding with the term of the permit
19 issued pursuant to Chapter 10 (commencing with Section 2800) of
20 Division 3. ~~If, for any reason, the permit is revoked, the agreement~~
21 ~~pursuant to this section expires two years from the date of~~
22 ~~revocation of the permit unless renegotiated with the department.~~
23 to Section 2835, if the department determines that the master
24 agreement does both of the following:

25 (A) Fulfills the requirements of the plan approved by the
26 department pursuant to Chapter 10 (commencing with Section
27 2800) of Division 3.

28 (B) Supports the conservation of covered species consistent
29 with that plan.

30 (3) The master agreement shall be amended from time to time
31 if the department determines that is is necessary to amend the
32 agreement to incorporate adaptive management strategies
33 consistent with the implementation of the plan.